

EXHIBIT S

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY, a Hawaii Citizen,) CIVIL NO. 03-00385SOM
5 Plaintiff,)
6 vs.)
7 HAWAII EXPRESS SERVICE, INC.,) - VOLUME 3 -
8 et al.,)
9 Defendants.)
_____)

10
11 TRANSCRIPT OF PROCEEDINGS

12 The above-entitled matter came on for hearing on
13 Wednesday, March 1, 2006, at 9:04 a.m., at Honolulu, Hawaii,

14 BEFORE: THE HONORABLE SUSAN OKI MOLLWAY
United States District Judge

15 REPORTED BY: STEPHEN B. PLATT, RMR, CRR
16 Official U.S. District Court Reporter

17 APPEARANCES: TIMOTHY J. HOGAN, ESQ.
WESLEY W. ICHIDA, ESQ.
18 Lynch Ichida Thompson Kim & Hirota
1032 Bishop Street, Suite 1405
19 Honolulu, Hawaii 96813

20 Attorneys for the Plaintiffs

21 MICHAEL E. BAUMANN, ESQ.
22 DAMIAN D. CAPOZZOLA, ESQ.
Kirkland & Ellis LLP
777 South Figueroa Street
23 Los Angeles, CA 90017

24 Attorneys for Defendant
Post Confirmation trust
25 for Fleming companies, Inc.

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your name and spell your first and last
4 name.

5 THE WITNESS: Brian Christensen. B-R-I-A-N,
6 C-H-R-I-S-T-E-N-S-E-N.

7 BRIAN CHRISTENSEN,
8 called as a witness on behalf of the Plaintiff, having been
9 produced and duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. Good morning, Mr. Christensen.

14 What is your job presently?

15 A. I am the president of C&S Wholesale, the Hawaii division.

16 Q. And what was your job in -- let's say April 1st 2003?

17 A. I was the president of Fleming Companies Hawaii division.

18 Q. And so would it be fair to say that you were the boss of
19 the people that are the employee defendants here?

20 A. Yes.

21 Q. Okay.

22 And, Mr. Christensen, what was your understanding --
23 was it your understanding that it was Fleming's intention as
24 of April 1st, 2003 to go back to the Berry system as it was
25 originally configured by Mr. Berry?

1 A. Yes, it was.

2 Q. Okay.

3 And, Mr. Christensen, you were at one time a
4 defendant in this case; is that correct?

5 A. Yes.

6 Q. Was it your understanding that Fleming had agreed to
7 indemnify you regarding Mr. Berry's claims?

8 MR. BAUMANN: Objection --

9 MR. HOSODA: Your Honor, objection. Request for
10 side bar.

11 THE COURT: Well, I don't think it's relevant, so
12 I'll sustain the objection on relevance grounds.

13 BY MR. HOGAN:

14 Q. Mr. Christensen, during the period after Fleming filed
15 for bankruptcy on April 1st, 2003, did it close down any
16 divisions, to the best of your knowledge?

17 A. I believe it did, but I'm not sure if it was on April
18 1st.

19 Q. And I --

20 A. Sometime after that.

21 Q. And that wasn't what I was trying to imply. But during
22 the period after April 1st, were there divisions being closed
23 down?

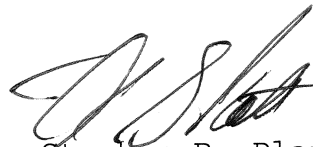
24 A. I believe so.

25 Q. And was it your understanding that the product from those

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-ooOoo-

I, Stephen B. Platt, Official Court Reporter,
United States District Court, District of Hawaii, do hereby
certify that the foregoing is a true and correct transcript of
proceedings before the Honorable Susan Oki Mollway, United
States District Judge.



/s/ Stephen B. Platt

THURSDAY, APRIL 27, 2006

STEPHEN B. PLATT, CSR NO. 248